D.B. CIVIL SPECIAL APPEAL (W) NO.919/1995
SHANKER LAL
VS
STATE OF RAJASTHAN & ORS.

Date of Order : 09/10/2006

HON'BLE THE CHIEF JUSTICE SHRI S.N. JHA
HON'BLE JUSTICE SHRI MOHAMMAD RAFIQ

Mr. Rajat Dave, for the appellant.
Mr. Rameshwar Dave, Dy. Government Advocate.

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This special appeal is directed against the order of learned Single Judge dated 16.10.1995 in S.B. Civil Writ Petition No.3403/1995. The appellant had filed writ petition challenging the order of District Collector, Udaipur dated 5.8.1995 in case no.12/93 Panchayat (U.D.) cancelling the sale deed executed by Gram Pancanyat Bhuwana on 28.2.1974 with respect to plot no.125 situated at village Sukhel in favour of appellant. The case of the appellant before the learned Single Judge was that before cancelling the sale deed, no opportunity of hearing was given to him. The learned Single Judge disposed of the writ petition in the following terms:

> "In case the petitioner succeeds in establishing a case that no notice was served upon him before passing the impugned order, the Collector will recall the order and decide the matter afresh after providing full opportunity to the petitioner to project his view point. The Collector will decide the matter

> by a speaking order. The Collector will also consider the interim relief to which the petitioner is entitled to as the learned counsel for the petitioner submits that the petitioner is in possession of the land in question."

From a bare reading it is evident that the order was in favour of the appellant except that the impugned order of the Collector was not formally set aside. There was however enough indication that the Collector would pass a fresh order in case the impugned order had been passed without giving opportunity of hearing. All that therefore, the appellant required to do was to satisfy the Collector was that the order had been passed without giving opportunity of hearing to him. Instead, the appellant preferred this special appeal. The appeal was admitted and curiously, operation of the order of learned Single Judge was also stayed; the matter has thus remained in abeyance for more than a decade.

We are of the view that passing any order without giving opportunity of hearing is violative of the rules of natural justice and in such a case the matter has to go back to the authority concerned so that fresh order may be passed after opportunity of hearing. In this view of the matter, it is not possible to pass any other order at this stage.

Considering the fact that the matter has remained in abeyance for pretty long time, we are inclined to fix a date of hearing and grant limited protection to the appellant by staying operation of the order of Collector till the date of hearing. As suggested on behalf of the appellant, we fix 21st Nov., 2006 for hearing by the Collector, the impugned order dated 5.8.1995 shall remain stayed till that date. If the appellant fails to appear before the Collector on that date, he may proceed in the manner as he likes.

With the above observations, the appeal is dismissed.

Let a copy of this order be sent to Collector forthwith.

(MOHAMMAD RAFIQ), J. **(S.N. JHA), CJ**.

c.p.goyal/-